IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1941 of 1983
With
FIRST APPEAL No. 1942 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BOMBAY CHEMICALS P LTD & 1 - Appellant(s)
Versus
AHMEDABAD MUNICIPAL CORPN - Defendant(s)

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Appearance :
MR GIRISH D BHATT for Appellant(s) : 1 - 2.
MR BP TANNA for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/07/2006

COMMON ORAL JUDGMENT

1. The First Appeal No. 1941 of 1983 is filed by the appellants – original defendants challenging the judgment and decree passed by the learned

City Civil Court, Ahmedabad, dated 29th October, 1982 passed in Civil Suit No. 1130 of 1977 in dismissing the counter claim of the appellants herein – original defendants. So far as First Appeal No. 1942 is concerned, the same is filed by the appellant – original plaintiff challenging the judgment and decree passed by the learned City Civil Court, Ahmedabad, dated 29th October, 1982 passed in Civil Suit No. 1130 of 1977 in dismissing the said suit. As both the appeals are arising out of the same judgment and decree, they are being disposed of by this common judgment and order.

2. The plaintiff filed the suit bearing Civil Suit No. 1130 of 1977 in the City Civil Court, Ahmedabad, for a money decree for Rs. 48,821.75 ps with 6% interest, alleging inter alia, that the defendants by refusing to supply material, committed breach of the contract and that the plaintiff suffered loss of Rs. 58,415.50 ps since the plaintiff was required to purchase the phenyle by paying higher price on account of the breach committed by the defendant – company.

3. As per the averments in the plaint, the plaintiff invited tenders for its requirement of phenyle for the year 1974-75. The tenders filled up by the defendant No.1 was accepted and the letter of acceptance on behalf of the plaintiff was sent to the defendant No.1 on 3rd April, 1974. It was pointed out that the defendant No.1 would supply on the agreed rate, the quantities of phenyle 18 GAC 1st Grade IS 1061/1964 'Bio-Chem' as ordered from time to time during the period of 1.4.1974 to 31.3.1975. The approximate annual requirement was indicated at 42,000 Ltrs of phenyle. The said material was to be supplied in non-returnable containers of 25 Ltrs drum packing. The said material was to be supplied at the rate of Rs.2.90/- per Ltr inclusive of 10% sales tax. The contract was executed between the parties on 25th April, 1974. The defendant No.2 accepted on behalf of the defendant No.1, under the said contract, the plaintiff had ordered for supply of 28,000 Ltrs of phenyle on 21st May, 1974. That a month-wise delivery schedule up to December, 1974 was also given to the defendant

by way of tender accompaniment. The schedule was fixed, under which, the defendant No.1 was required to supply the phenyle every month as per the said schedule. It was also further averred that inspite of repeated reminders, the defendant No.1 did not supply to the plaintiff the phenyle to the tune of 14,000/- Lts and the refusal to supply material, though ordered amounted to clear breach of contract on the part of the defendants. That the Corporation was required to purchase the phenyle, which was required to be supplied by the defendants, at a higher price from the market and at the relevant time, the market price of the phenyle was Rs. 6.50 ps per Ltr and thus, on account of purchase of 13,975 Ltrs of phenyle from the outside party, the plaintiff suffered loss of Rs.58,415.50 ps and accordingly, the defendants were called upon to pay the above sum, which was not paid and therefore, the plaintiff – Ahmedabad Municipal Corporation prayed for the money decree for an amount of Rs. 48,821.75 ps.

4. The suit was resisted by the defendants. Not

only that there was a counter claim also by the defendants. It was denied that the defendants were guilty of any breach of contract as alleged. It was submitted that the plaintiff failed to make the payment in accordance with the terms of the said contract for the preceding year. The market price at Rs. 6.75/- per Ltr as alleged, was disputed and also it was denied that the alleged rate quoted in the tender of M/s. Shelat Bros. was the correct market price at the relevant time of assessing the loss alleged to have been suffered by the plaintiff. The learned trial Court framed the issues at Exh.26. The plaintiff examined one Vinodkumar Kantilal Shah at Exh.41, Subhashchandra Someswar at Exh.60 and Arvindbhai Govindbhai Shah at Exh.66 and on the defendants' side, the defendants examined witnesses Vilas Trambak Bochare at Exh.74 and Ranjit Vasudev Surya Vansi at Exh.86. The documentary evidence consisted of various correspondence exchanged between the parties in relation to suit transaction at Exh.36 and other documentary evidences at Exhs.61, 80, 81, 82, 88, 89, 92 to 98. The learned trial Court on appreciation of oral as

well as documentary evidence held that the plaintiff proved that the contract dated 25th April, 1974 was a valid and legal contract. The learned trial Court also held that the plaintiff has proved that the defendant – company committed breach of contract dated 25th April, 1974. However, the learned trial Court held that the plaintiff has failed to prove that he suffer a loss of Rs.58,415.50 ps, i.e. excess payment, than the contract rates during the contract period and accordingly, dismissed the suit as well as the counter claim.

5. Considering the fact that though the learned trial Court has held that there was a breach of contract by the defendants, however, the defendants were required to supply the phenyle at the rate of Rs.2.90/- per Ltr as per the contract and the plaintiff also purchased subsequently the said quantity of phenyle, which was required to be supplied by the defendants at Rs. 2.90/- per Ltr. Thus, the plaintiff did not suffer any loss arising out of the breach of contract committed by the defendants. Under the

circumstances, the learned trial Court has rightly dismissed the suit since no loss was established by the plaintiff.

6. So far as the counter claim of the defendants with regard to payment of Rs. 4850/- by way of security deposit under the contract for the year 1973-74 and Rs.6100/- by way of security deposit under the contract for the year 1974-75 is concerned, in view of the findings given by the learned trial Court with regard to breach of contract by the defendants, the same is also rightly dismissed by the learned trial Court. On going through the judgment and decree as well as the oral and documentary evidence, this Court is in complete agreement with the reasoning and findings given by the learned trial Court while dismissing the suit as well as the counter-claim.

7. For the reasons stated above, both the appeals fail and are accordingly dismissed. However, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.